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A
LETTER
TO THE
Lord Bishop of Carlisle,
Concerning One of his Predecessors
Bishop M E R K S;
On Occasion of a New Volume for the
PRETENDER,
INTITULED,
*The Hereditary Right of the Crown of
England Asserted.*

THE THIRD EDITION.



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A
L E T T E R
T O T H E
Lord Bishop of *Carlisle*, &c.

My LORD,

THE last New Book I run over bears a Title of *The Hereditary Right of the Crown of England Asserted, &c.* It is fairly printed in a thin *Folio*, and should be a Rarity by the Price of 12 s. The Publication of it, I remember, was with some sort of Pomp; the Title-Pages, in full Half-Sheets of good Paper, appearing on a *Sunday* Morning upon every conspicuous Post and Door, to draw away the Eyes of all that were going to Church, or to any Religious Worship; with an *Advertisement* happening to be put into the next *Gazette*. It is said in the Front to be written by a *Gentleman*, not called a *Person of Quality*, tho' I think both those Distinctions serve often for a Sham or Feint to dress up the Image of any Anonymous Author. Whoever he be, he writes smoothly and artfully enough, with the Air of a Courtier, and all the Appearance of a Scholar. The Subject Matter is only to arraign the Nation of Treason and Rebellion; and his late Majesty King *WILLIAM* of Usurpation; nay, to absolve our present Excellent *QUEEN*, upon no other Terms than a good Intention to resign the Crown to a Right Heir; which Heir, it seems, is the same we call the *PRETENDER*: And indeed the whole

Book seems to be drawn up for his **LARGE DECLARATION.**

I was really, my Lord, so much incensed at this Invasion of Her Majesty's Right and Dominions in a Time of Peace and Safety, that I had no Patience to read the Book as a Politician, but resolved to go through it as an Historian only. I saw he was full of Citations and References, and had an Appendix of some Original Papers, and seem'd to be well acquainted with those Matters by his free Access to the *Tower*, the Bishops Registers, the *Cotton Library*, and another which he calls *Biblioth. Harley*, which is indeed a great Treasury of Historical Memoirs. But with all these Advantages, his Zeal and his Cause would not suffer him to be true and impartial. So far from it, that, I dare say, no Labourer for a Party was ever guilty of more Mistakes, or has given more wrong Turns to the Matters of Fact and Law. I hope Dr. *Higden* will correct him for some of those Faults, and convince the World of them: I could point him to near a hundred Instances, but I presume his own Observation will prevent the Trouble of others.

I only beg Leave to mention one single Instance to your Lordship, because it concerns your own See, and one of your Predecessors in it. The Case of Bishop *MERKS*, of whose good Works I think we have nothing remaining, and can judge little of his Character, but that he was a warm and turbulent Man, an Adherer to *Richard II.* after his Abdication, an Enemy to *Henry IV.* when legally establish'd on the Throne; nay, a Conspirator, and by Law adjudged a Traitor, for no less than attempting to murder the King, and to promote a *French Invasion*: For that was the Form of his Indictment, and a true Verdict found upon it, *Quod ipse & alii complures falsò, nequiter, & subdolè contra Ligeantias suas præmachinantes, viis & modis quibus excogitari poterat, qualiter Dominum Regem destruere possent, & MURDARE, & Regnum ANGLIÆ*

cum INIMICIS NOSTRIS de FRANCIA de novo inhabitare--- And all this pro Domino RICARDO nuper Rege Angliæ, qui antea pro malâ & iniquâ gubernatione Regni Angliæ per omnes Status ejusdem Regni à regimine suo Regni prædicti non immeritò depositus fuit. [Rymer Acta Publ. Tom. VIII. p. 165.] One would think these Crimes of plotting to murder a Crowned Head, and to bring in a French Army, were so base and unnatural, that none but a very Popish Prelate could be guilty of them; and none but a French Writer, a Maimbourg, an Orleans, or so, could make any Apology for them. Yet this English Gentleman, who, I presume, would be thought a Protestant, has now at this Juncture made Bishop MERKS to be the Man of Conscience and Integrity, p. 70. I hope none of the Conspirators with the French Fleet, at least none of the intended Assassines of King William, will ever come to have this Character given of them in England, tho' they have an equal Title to it.

But, my Lord, as I before intimated, I do not intend to concern my self so much about this Bishop's Character, as about this Gentleman's misrepresenting the History of him. He dwells much upon the bold Speech he made in Parliament, and publishes the Occasion and Copy of it from my Lord Coke, who did not so much as know the Bishop's Christian Name, and who indeed, though an Oracle of Law, did very little Justice to History, as your Lordship well knows. It is to Me a Question whether the Bishop made any such Speech: The Gentleman himself confesses, that the original known Authority upon which the Truth of this Story depends is E. Hall's Chronicle, written in Henry VIII's Reign: Whose Authority had been better, if either the Matter could be supposed to have been within his own Knowledge, or he had produced some Evidence for it. But it was near 150 Years after the Speech was delivered, and we find no Heads, no Hint of it in any Writer who lived near the
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supposed Time of speaking ; no, nor in the Reign of *Edward IV.* when upon that Return of the *York* Family, the Historians, and the very Acts of Parliament, did all that was possible to honour those who had been Traitors against *Henry IV.* If we go back to what we have of the Rolls of Parliament in that first Year of *Henry IV.* there is a Reference had to a great many Speeches, and very hot Words, that came from those Peers, who were soon after in Rebellion ; but no Intimation of a Word spoken by the Bishop of *Carlisle*, whose very Name is omitted in the Roll reciting all the Lords Spiritual and Temporal *who voted at the Time* Sir Edward Coke mentions, as this Gentleman is likewise pleased to confess. And therefore he need not have raised any Doubts about the Timing of the Speech in the Beginning or End of the Session, till he could first truly affirm, that such a Speech there was, or to such Purpose, tho' we find nothing of it till near a Century and a half after the Speaker's Death. I suspect it was a Speech made for him in later Times, and the rather because there are so many different Copies of it, every following Historian dressing it up in his own Oratory. Not that I am concerned whether there was any such real *Speech* or no ; I am only sure the Authority for it is too dark and remote to build any thing upon it.

I proceed to much grosser Mistakes of this Gentleman about the Bishop. He says, *It does not appear that any Judicial Proceedings were had against the Bishop for this Speech.* Why no, my Lord ; I hope there never will be any Judicial Proceeding against any Member of either House for a Liberty of Speech within Doors : And yet it seems this Bishop's denying the Right of the Prince in Possession, and presuming to speak in favour of one under a Parliamentary Exclusion, did not pass without Censure of the Lords, and a sort of Judicial Proceeding in that House : For Sir *Edward Coke* affirms, that

that for this Speech he was arrested by the Earl-Marshal, and committed to Custody.

But, my Lord, if it be no great Fault in a Gentleman to affirm uncertain Things, it is however less excusable, if he assert for Truth what is demonstrably an Error. As at the Bottom of the same Page, when he says, *We are very well assured, that within two Months after Henry IV's Accession to the Crown, he was deprived of his Bishoprick of Carlisle, and translated to a poor one of little or no Value, by the Pope's Authority.* For this he cites *Walsingham Hist. Angl. in Hen. IV, p. 364.* But what does *Walsingham* there assure him? That Bishop Merks was deprived of his Bishoprick of Carlisle by the Pope, or any Authority of the See of Rome? No! he only says he was translated by the Pope, which, I think, proves him not deprived; for then he had not been properly translated, however again promoted. But does *Walsingham* express that Removal to have been within two Months after Henry IV's Accession to the Crown? No, not a Word of the Time, and by undoubted Records we know the Time better. That King's Accession to the Crown is computed from Sept. 30, 1399: So that two Months after it carries us no farther than the Beginning of December in the same Year. And yet we find him actually Bishop of Carlisle (neither deprived nor translated) above five Weeks after this, even when he was committed for High-Treason on the 10th of January following. The Words of the Warrant that Day to the Constable of the Tower are, *Mandamus vobis quod Thomam Episcopum Karleolensem, & Rogerum Walden Clericum --- recipiatis --- T. R. apud Westmon. X Januar. (Reg. 1. 1399.)* where by good Luck he is joined with a deprived Bishop, Roger Walden deprived of the See of Canterbury, and therefore called Roger Walden Clerk, to teach us, that had the Bishop of Carlisle been at this time deprived, he would have been simply stiled *Thomas Merks Clericus*;

ricus; or had he been translated, he would have had the Title of his new See.

Yet the Gentleman upon this one Mistake runs into many others. He makes *this early Deprivation from his Bishoprick, to have been before the Treason for which he was indicted.* And I wish indeed, for the Bishop's Honour, it had been so. But Matters of Fact are stubborn Things, and no Fact can be more certain, than that his See was full of him, while between *December 6, and January 10,* he had committed several Treasons, and was put into Custody for them. Nay, I doubt not but he continued actual Bishop to the very Time of his Trial and Conviction. For 18 Days after his Commitment, when his Trial was coming on, the King sent a Writ of Instruction to the Judges how to proceed in the Indictment of any Archbishops or Bishops, and ordered the legal and accustomed Course to be taken, without Regard to their Spiritual Function, by which 'tis plain he meant the Case of Bishop Merks then to be brought upon his Trial. This was dated at *Westminster, xxviii Januarii, Reg. 1.* [*Rymer. Acta Pub. viii. p. 123.*] The Gentleman undertakes to say farther, That *this early Deprivation is to be attributed to no other Cause besides the Liberty he took in his Speech, or his Refusal to do Homage to Henry IV.* When 'tis plain there was no such Effect, I will not dispute with him the Causes of it; yet he is unlucky in assigning such Causes as, were the Effect true, would make directly against him. If deprived for the *Liberty of Speech,* then methinks there was a *judicial Proceeding* against him for that Speech; which the Gentleman has just before flatly denied: If it were for *Refusal to do Homage to Henry IV,* as nothing appears like it, so I doubt such Refusal (however criminal in the King's Courts) would not have served as a Canonical Reason for the Pope to have deprived him. It is well known that the same Pope's Deprivation of Archbishop Walden, was for another Cause.

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The Gentleman goes on to another notable Fancy ; says he, *It may be here observed how highly the Pope favoured Henry IVth's Title, since he deprived Bishop Merks for not submitting to him, and that contrary to an express Act of Parliament made by Richard II, against Translations of Bishops by the Papal Authority.* In this one Observation, my Lord, the Mistakes are almost as many as the Words. The Pope did not favour Henry IV's Title till he was warm in his Throne, and able to support his own Title ; nay, not till he had purchased his Favour by the Persecution of Hereticks, and shedding the Blood of the poor *Lollards*. And the Pope's Clergy were much more inclinable to the abdicated Prince *Richard II*, and were forward in most of the Stirs and Rebellions against *Henry IV* ; and may, if the Gentleman please, be called Sufferers for their Loyalty. An Archbishop of *Canterbury* disgraced and deprived, an Archbishop of *York* sentenced and beheaded for Treason, Bishop *Merks* found guilty of the same Crime, a Bishop of *Norwich* begging the King's Pardon, an Abbot of *Westminster* so afraid of the Discovery of his Treasons that he died of that Fear, and at least two Secular Priests hanged for Accomplices with Bishop *Merks*, one of which, *Mawd* or *Mawdlin*, was (for ought I know) the first *PERKIN* in this Kingdom, and took upon him to personate the absent King *Richard*. All the History of that Reign of *Henry IV* makes it evident, that he had not so much the Hearts of the Clergy, nor indeed of the Nobility, as he had of the Commons and People of *England*, who in those Days understood what it was to be delivered from Tyranny and Oppression. Our late Revolution, my Lord, was much more happy in being the universal Voice of the Nation ; and wherein the Prelates and Clergy (for the greater Part) had as much Hope and Joy as any other Body of Men. But to return to the Gentleman and his unlucky Observation : If the

Pope deprived Bishop *Merks*, (for which I never saw any Authority, and he brings none) it could not be barely for *not submitting* to the King before he broke into Rebellion, but it must be after his Treasons, nay after his Trial and Conviction; till when he was Bishop of *Carlisle*, as the Records expressly call him. Nor did the Pope in this Matter use any *Papal Authority contrary to express Act of Parliament against Translations of Bishops*: For I dare be confident the Pope did not translate him to any See in *England* or *Wales*; if he had so done, we should have heard of some Bulls, or other Token of it. And it is best for the Gentleman's Argument that the Pope did not translate him: For certainly it would be an odd Instance of the Pope's Favour to *Henry IV*, that his Holiness, against the King's Will, translated a Bishop that would not submit to him, and this not only in Defiance of the Royal Pleasure, but of an express Act of Parliament. I must beg this Gentleman and his Friends to know, that in the darkest Times of Popery, our English Forefathers would not suffer the Pope in *England* to act any thing contrary to express Acts of Parliament: And at this Juncture of *Henry IV*'s Accession to the Throne, the two Houses of Parliament were the farthest from conniving at any such Breach of Statute; for the Violation of Statutes was now charged as the main Grievance in the late Reign of *Richard II*, and was to be redressed and effectually prevented for the Future.

Our Histories and Registers know nothing of such Translation of Bishop *Merks*. *Roger Walden* indeed, after his Deprivation from the See of *Canterbury*, was translated (if the Gentleman will so call it) to *London*; but this after he was fully reconciled to the King, and by the King's Favour rather than the Pope's. And we have so much Proof of this Translation, or rather new Promotion of *Walden*, that had the like happened to Bishop *Merks*, it is very strange that there should not be

be the least Footstep of it in any of our Civil Records or Ecclesiastical Registers, as far as I could ever see or hear of; and your Lordship will believe, that I have seen or searched for most of them pertaining to Church Affairs.

The Gentleman again is angry, that Dr. Higden should suppose, That Bishop Merks pleaded the Pardon of Henry IV for that Conspiracy against him. Says the Gentleman, in big Words, But how comes the Doctor to know, that Bishop Merks ever pleaded Henry IV's Pardon? In what Writer or History is it to be found? And after a little more Insult, he is pleased to add, We are yet to seek for Authority for this Piece of History. Whether he has sought, or whether he be willing to find, I cannot tell: But I found it very clear and plain beyond all Exception, upon the original Roll of his Trial and Discharge, that on the Wednesday next after the Feast of the Conversion of St. Paul, 2 Hen. IV. 1400. the said Thomas Merks, late Bishop of Carlisle, came before the King (i. e. in his Court at Westminster) and surrendered himself to the Prison of the Marshalsea; and then being asked if he had any thing to say why the Court should not proceed to Judgment against him, he alledged (or pleaded) the special Pardon of the King granted to him of all Treasons, Murders, &c. and produced it, dated the 28th Day of November, in the second Year of the Reign of King Henry IV, and so was discharged.

— Die Mercurii proxime post Festum Conversionis Sancti Pauli, dictus Thomas Merks nuper Episcopus Carlisle. venit coram Domino Rege apud Westminster, & reddidit se prisonæ Mareschalciæ Domini Regis, & tunc interrogatus siquid pro se habeat dicere quare ad iudicium super eo &c. procedi non debeat, allegavit specialem Pardonam Regis sibi factam de omnibus proditiõibus murdris, &c. eamque protulit datam die vicesimo octavo Novembris anno Regni Henrici quarti secundo, quæ quidem pardona a Justitiariis approbata est & Episcopus dimissus — Rot. 4. An. 2. Hen. IV. I think in this

judicial Cause, there can be no better Authority than this Record of the Court to prove, that the late Bishop *Merks* in Person being brought to Judgment, did *plead his Pardon*; which Pardon produced by him was admitted by the Judges, and he was thereupon discharged.

The *Gentleman* proceeds to a very strange Supposition, That if Bishop *Merks* did accept and plead the Pardon of *Henry IV*, yet he did not thereby submit to him, nor acknowledge his Authority. Says he, *What is the Consequence the Doctor would draw from thence? Does it follow that he thereby acknowledged him to be a rightful King, or engaged himself to be his true and faithful Subject for the future?* Yes certainly, if the King were wise and the Bishop honest; or else the royal Mercy was a Jest, and the Bishop's Plea of it was a great Wickedness. A very dangerous Doctrine for the Princes he calls *de facto*, that if they grant a Pardon to a Man for Treason, and that Pardon be accepted and pleaded, yet that Man has his Life given, with a Liberty to commit more Treason. Farewel Policy, Equity, Gratitude, and all manner of Conscience! No Security, but never to pardon such sort of Men.

Yet the *Gentleman* insists upon it, That tho' the Bishop's Life was saved by the King's Mercy, this did not oblige him to be a good Subject, because there was no such Condition inserted in the Pardon. Says he, with an Air somewhat imperious, *It may be the Doctor thinks, there could be no other Motive for this Pardon, but only the Assurance he had given Henry IV of becoming his good Subject for the future. But why then was it not inserted in the Pardon? Why was that Reason omitted?* Why, I presume, because in the current Forms of Pardon no such Assurance was ever before inserted: Nay, if any such Covenant or Condition were inserted, it would not be a free Pardon, nor perhaps valid; for I think I have heard the Lawyers say a Pardon is void if it be conditional; and not absolute and full. If so,
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it was better for the Bishop that this Reason *was omitted*, and left upon his own Conscience to be sufficiently implied and understood. I hope it is true in Law, because very just and reasonable, that in Pardons of Grace and Favour, the Receiver's Submission and good Behaviour for the future is expected and required, tho' not specified in the Pardon: And I believe the Statutes have confirmed the Common Law in this Point, that upon pleading of a Pardon, there must be Surety given of good Abearing, otherwise the Act of Grace would not have its due Course and Effect. Nay, if a Man plead a particular Pardon, he must have a Writ of Allowance, (saith Sir Mat. Hale, *Pleas of the Crown*, p. 252.) *qui il ad trouve Surety som'. Stat. 10. Ed. III.* And what if, after all this Gentleman's Surmises, Bishop Merks had the Wit to take Care that his Pardon should have a legal Effect, by finding Sureties for his good Abearing, i. e. his living in Submission and due Allegiance to Henry IV? This again is in the very Record of his Trial and Release, — *Episcopus dimissus datis Manucaptoribus, quod ipse a modo bene se gerat*; giving Mainprize, or having good and sufficient Sureties bound for him, that from henceforth he will behave himself well, i. e. never be again a Traitor and Rebel. And what more justifies the Bishop than any of those Gentleman's wrong and false Suggestions, he kept the Faith and Security given to the Time of his Death, which happened soon after.

The Gentleman does another great Injury to the Ashes of your Predecessor, by making *Walsingham* say expressly, *That when Bishop Merks's Party was defeated, King Richard was so mortified at the News of that Misfortune, that (as was reported) he voluntarily famished himself.* For this he quotes not only *Walsingham*, but *J. Hall's Chronicle*; when yet neither of those Historians say one Word of Bishop Merks's Party being defeated. Tho' he was deep in the Conspiracy, yet we know not that he was actually

actually in Arms, much less at the Head of a Party in Arms. However, the *Defeat of his Party* could make no Impression upon the Mind of King *Richard*; for the Bishop was in safe Custody above a Month before King *Richard's* Death; and the Rebels that continued some Time after in Arms till they were *defeated*, were by no Means to be called Bishop *Merks's* Party. It is very remarkable, that this professed Advocate of the Pretender should be so much like his Master, and have such evident Tokens of Suspicion and ill-grounded Pretension in him. But indeed the Defence of any Cause depends so very much upon the Merit of it, that I never knew an ill Cause undertaken, but that, however artfully managed, it betrayed its own Weakness in the wrong Turns and false Suggestions which an Advocate is forced to use for it. I could give abundant Proofs of this Connexion of a Cause, and the Patron or Pleader of it, in this *Gentleman* and his *Hereditary Right*; but I promised to keep only at present to this single Instance of your Lordship's Predecessor Bishop *Merks*; of whom, to serve his Turn, this Writer has made a Story, and covered it with a Show of History and Records, when your Lordship will find Error and Mistake not only in the Whole, but in every particular Circumstance of it.

The plain History of Bishop *Merks* seems to be directly contrary to what this *Gentleman* labours to represent it. This *Thomas Merks* had been a Monk of *Westminster*, and was by King *Richard* preferred to the See of *Carlisle* in the twenty first Year of his Reign; when Archbishop *Arundel* was violently driven from his See of *Canterbury*, and an Intruder, *Walden*, put into it; and when most of the exorbitant Acts of that Reign were done within the Compass of the same Year. And therefore the Monks of *Carlisle*, who had the Right of electing a Bishop, opposed this Brother *Thomas*, as suspecting he was recommended with some

some ill Intention, at that Time of a general Corruption of the Court; and it was with great Difficulty that they were at last over-awed to chuse him. This put him into the Interest of the great Lords, who about the same Time were advanced to extraordinary Honours; particularly of *Edward Earl of Rutland*, created Duke of *Albemarle*; *Thomas Holland*, Earl of *Kent*, Duke of *Surrey*; and *John Holland*, Earl of *Huntingdon*, made at the same Time Duke of *Exeter*; the three Peers, who being more especially obnoxious to a free Parliament, broke into open Rebellion against *Henry IV.* and seem to have drawn their Friend and Creature the Bishop into the Snare with them: Tho' the Bishop had another strong Motive to take that Side, upon his private and personal Obligations to King *Richard*, being advanced by him from a Monk to a Secular Prelate, and being in so much Confidence and Favour with him, that the King named him one of the Executors of his last Will and Testament, dated the 16th of *April*, 1398; and in the next Year seems to have carried him along with him into *Ireland*, among several other Bishops that he prest to attend him in that Expedition. And this possibly is the Reason why we do not find him in the last Parliament or Convention of *Richard II.* being then in Service and Attendance upon the King's Person in the West. Nor do we so much as find him mentioned in the first Parliament of *Henry IV.* tho' we have an express Roll of the Names of the Lords Spiritual and Temporal, then present upon the chief Day and main Business, that of disposing the Person of King *Richard*; the very Time when they father the notable Speech upon him; when yet, if the Roll be true, he must have spoke in his Absence and by Proxy, (*Rot. Parl. 1. 1 H. 4. n. 73.* correctly printed in *Brady's Ric. II. Append. 132.*) There is indeed one Authority unknown to the Gentleman, that, if true, must prove the Bishop of *Carlisle's* Atten-

Attendance in Parliament 1 *Hen. IV* ; and that is an Extract I have by me from the Register of Scrope Archbishop of York, running thus ; *Die Dominica xix Octob. 1399. in capella hospitii Archiepiscopi Ebor. apud London juxta Westm. in Parlamento primo Henrici quarti, Thomas Sumesten Episcopus Karleolensis, dudum Monachus Westmon. personaliter constitutus, Domino Archiepiscopo Eboracensi Metropolitano suo ejusque Successoribus obedientiam & fidelitatem prestat, Presentibus tunc ibidem Abbate Westmon. &c.* This Memorandum, if rightly taken, must be meant of Bishop Merks, who it seems likewise went by another Name, that of Sumestan. He is here in Presence of his old Governour the Abbot of Westminster, who had likewise gone with King Richard into Ireland, as Walsingham affirms, (*Hypod. Neustr. p. 553.*) and was in the first Plot against Henry IV, and perhaps the Instrument of drawing in the Bishop his late Brother and Pupil. Upon which I must needs observe to your Lordship, that tho' this Gentleman makes the Bishop's Adherence to Richard II, to be all Loyalty and sworn Allegiance, and to render him what he calls *so glorious an Example of Fidelity and Fortitude* ; yet in Truth it was his own Dependencies and his own Interests that carried him to espouse the Cause of King Richard, and to oppose that of King Henry, to whom, in a free Parliament, he must have been answerable, for having been made so considerable a Tool of the late arbitrary Reign, and the Male-Administration of it.

However, if he were present in the Parliament 1 *Hen. IV*, it is very probable he might speak to second some of the discontented Peers, (and yet in the Records and Reports of that Parliament we have no Proof of his speaking, nor of his appearing in it ;) but I dare say we have no authentick Copy of that Speech, however the late Writers are pleased to flourish with it. Dr. Brady, who is pleased to assign the Delivery of it upon pro-

propounding the Question, *What should be done with King Richard?* on Thursday 23 Octob. (when yet in the Names of the Bishops then present, the Name of the Bishop of *Carlisle* does not occur) takes the Copy of it as found in the First Part of *Sir John Hayward's Life of Henry IV*, printed at London 1599, which is a modern Harangue, and a Piece fitter for Romance than History.

Whatever this Gentleman fancies, the Pope never concerned himself about that *Speech*, nor could he possibly deprive the Bishop upon that Account; for he was actually and legally a Bishop, not only for *Two Months*, within which the Gentleman gives him a Papal Deprivation, but for four Months after the King's Accession to the Crown. He was Bishop of *Carlisle* when he acted the Treason, when he was committed to the *Tower* for it, nay while he was arraigned, and till he was convicted. His Trial began on *Tuesday* before *Candlemas*, 1 *Hen. 4.* in the City of *London*, when before *Thomas de Beauchamp*, Earl of *Warwick*, and other the King's Justices, it was presented upon the Oath of twelve Men, That *Thomas Merke* Bishop of *Carlisle*, and others, had conspired against the King, &c. upon which the Justices sent a Precept to the Constable of the *Tower* to bring the Body of the said Bishop before them on the *Wednesday* following; and being accordingly brought, he pleaded that he was a consecrated Bishop, and by the Law of the Land was not bound to answer them: But this Plea not being admitted by the Judges, the Bishop making a Protestation of saving the Ecclesiastical Liberty and his Episcopal Privilege, put himself upon being tried by his Country; and the Jury brought in a Verdict the same Day, that the said Bishop was Guilty of the Treasons and Felonies aforesaid, committed from the Feast of *St. Nicholas* the Bishop last past to the Feast of the Circumcision of our Lord, and before and after. Judgment was not then
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given by the Justices, but the Bishop was remitted to the said Prison of the Tower, there to be kept in safe Custody. These are the Words of the Record, which I shall here transcribe: Rot. 4. 2 H. 4. London. die Martis proxime ante Festum Purificationis B. Mariæ anno 1 H. 4. coram Thoma de Bellocampo Comite Warwic, &c. & aliis Justitiariis Regis per Sacramentum duodecim legalium hominum extitit presentatum, quod Thomas Merk Episcopus Carliol. & alii contra Regem conspirantes, &c. quapropter pro eo quod præfatis Justitiariis cognitum est, quod dictus Episcopus Carliol. in Turri London de mandato Regis existit, mandatum est Constabulario Regis quod corpus ejusdem Episcopi habeat coram ipsis apud Turrim dictam die Mercurii sequenti,—— ad quem diem venit dictus Episcopus coram dictis Justitiariis ductus per dictum Constabularium—— & allegavit, quod ipse Episcopus unctus esset, nec per legem terræ teneatur eis respondere—— Hoc autem à Justitiariis non admissio, Episcopus protestans quod id salva libertate Ecclesiastica & privilegio Episcopali faceret, posuit se super patriam—— Juratores itaque veredictum tulerunt eodem die, quod dictus Episcopus culpabilis est de Proditionibus & Feloniis prædictis commissis à festo Sancti Nicholai Episcopi proxime præterito ad festum Circumcisionis Domini, & diu antea & postea. Judicium tunc à Justitiariis non est prolatum, sed Episcopus prisonæ Turris dictæ remissus est custodiendus ibidem quousque, &c. This is Demonstration, that the Bishop was not deprived from this See and translated to another within two Months after the King's Accession to the Crown, as the Gentleman so positively asserts; when at the four Months End he was impleaded, tried, and convicted, under the Style of Bishop of Carleol.

The Gentleman indeed offers an Authority for the earlier Deprivation of Bishop Merks, because, says he, we find the Temporalities of Carlisle were ordered to be surrendered to William Strickland 15 Nov. primo Henrici Quarti, 1399, citing for it
Rymer

Rymer viii. p. 106. Were this literally true, Bishop *Merks* must have been deprived within one Month after the King's Accession to the Crown ; for the Election, Confirmation, and Consecration, besides allowing Time for the Pope's Bulls, could not have been otherwise dispatched for the Restitution of the Temporalities to a Successor by the Middle of *November*. The Mistake is only of one whole Year, that Writ for restoring the Temporalities to Bishop *Strickland* was not in 1399, 1 *Hen.* 4. but in 1400, 2 *Hen.* 4. as all our Registers agree. And so run my Notes from the *Tower Records*, before I saw that useful Work of Mr. *Rymer*. *Temporalia restituta Willielmo Stryckland, Episcopo Karl.* 15 *Nov.* 2 *Hen.* 4. (*Pat.* 2. *H.* 4. *Rot.* 19.) 'The Gentleman can say, that in Mr. *Rymer's* Print, *An.* 1 *Hen.* 4. 1599, is set in the Margin ; but an Error of Misprint can be rectified by any judicious Reader, and Mr. *Rymer* himself would have helped him to correct it. For he places that Writ after several others, dated the End of *November* 1399, and *December* and *March* following. And this Writ of Restitution was after them in order of Time, as well as Place: Not going backward to 1399, 1 *Hen.* 4. but proceeding to 2 *Hen.* 4. 1400. Bishop *Strickland* having been consecrated on the 15th of *August* this Year, as in the *York Register* of Archbishop *Scrope*. *In Festo Assumptionis Beatæ Mariæ, Anno 1400, Willielmus Strikeland Electus Karliol. consecratur Episcopus per Ricardum Archiepiscopum Ebor. in capella castri de Carwode.*

His Predecessor *Merks* is never called Bishop of *Carlisle* after he was found Guilty of High-Treason ; from thenceforth (and not before) he was dead in Law, and legally stiled *Thomas nuper Episcopus*, as in the Warrant for removing him from the Tower of *London* to the Abbey of *Westminster*, 23 *June* 1400, (*Rymer* viii. p. 150.) and in the Grant of his Pardon 28 *Novemb.* next following, (*ibid.*

p. 164.) And in the mean time the Writ for a new Parliament, dated ix Sept. 1400, was directed, *Custodi Spiritualitatis Episcopatus Karliol. Sede vacante.*

Whether *Merks*, while he lay under a Verdict of guilty of Treason, was formally deprived by the Pope, for a Show of preserving the Rights of the Church, or for a Political Turn of complying with the King's Desire, I know nothing, because I read nothing of it. If there be any such Notice in the Registers of your See, your Lordship will please to inform me of it; and that will be a further Demonstration of this Gentleman's Mistake, " That
" he was deprived before he committed any Treason, and within two Months after the Accession of King Henry IV to the Crown, and that
" within the same time he was likewise translated
" by the Pope contrary to express Act of Parliament.

Walsingham does affirm, that the Pope translated him to another Bishoprick, from which he could receive no Fruits or Revenues: *Papa transtulit Episcopum Karleolensem ad Episcopatum alium, unde nec fructus perciperet nec proventus.* This the Gentleman takes to be an English or a Welsh Bishoprick of little or no Value, and makes the Translation a Breach of an Act of Parliament: Not considering that this Translation was but giving him a new Name to a titular See, or Shadow of a Bishoprick in *partibus Infidelium*, a common Stratagem of the Popes of Rome, and no Breach of the English Laws, which were not concerned in that Matter. This nominal See is said by Bishop *Godwyn* to have been that at *Samos* in Greece, and he justly calls it *Translationis Ludibrium*, a Jest of being translated by the Pope. It was so far from supporting Bishop *Merks*, that it broke his Heart, for he died soon after; and the Historian expressly observes, that he died of Sorrow or Fear rather than of Sickness. And his Memory was never had in any Reputation till after the coming in of the York Family,

mily, when it was Party-Rage to cry up all who had opposed the House of *Lancaster*. And even then they could say no Good of him, but gave him the general Character of a stout Man, and instead of his Actions prove it by a Speech never recorded, and, as we have reason to think, never delivered. The greatest Certainty we know of him is, that he was in the Plot for murdering the King, and for bringing over a *French* Navy and Army against a Prince in Possession and Parliamentary Right, to have restored an abdicated Prince, who must have ruined the Constitution; and yet this Prelate at this Juncture is called a *Man of Integrity and Honour*. It would raise the Indignation of any *English* Heart to have such a Character given of a vile Traitor by the Laws of God and the Land, conspiring against the King's Life, and calling in a Foreign *French* Power, the worst of Traitors to his King and Country.

But, my Lord, the *Gentleman's* Character of him is no more to be trusted than his History of him, which your Lordship sees to be not only partial, but mistaken almost in every Particular. I must humbly leave your Lordship to judge of his other Facts by what appears in this single Instance: Nor have I Leisure to point at the Principles of his Book, which are likewise very extraordinary; as, "That an Oath to the Possessor of a Crown does not bind in Conscience against the right Heir." A Way, in his own Meaning, to absolve Her Majesty's Subjects, or to teach them to swear with such Equivocation and Reserve as I think to be very damnable. Again, "That there is no Legislative Authority under a King *de facto*, nor are Acts of Parliament then valid without the Confirmation of the King *de Jure*." Which is, by his Scheme, to repeal or annul all our Acts of Security for the Protestant Succession, till a Popish Pretender shall be pleased to confirm them. Farther, he is very terrible upon those Princes,

Princes, who upon his Supposition are *Usurpers*; and yet he has this Salvo, that "It is not the bare "Act of Seizing and Filling a Throne, but the "Will of the Possessor, that must denominate him "an Usurper;" *i. e.* if the wrong Possessor have in himself a secret Will to restore the Crown to the right Heir, then his Usurpation is sanctified by his good Intention. He has many other Principles and Notions, which would unsettle all Monarchies, and utterly destroy this of *Great Britain*. He has mixed them indeed with some other Principles, to which I can agree, because they are true and inconsistent with his own Pretensions of hereditary Right; as that *a very mean Genius, and manifest Inabilities for Government, may be good and sufficient Reasons to keep a next Heir out of the Throne, p. 30.* This makes me think of the Report, that Mr. *Lesly* from abroad has lately complained of a very obstinate and untractable Man that does not understand Duty or Interest, &c. But, however, I think a moral Incapacity is worse than a natural; and I hope our Laws will always continue to incapacitate every Papist from assuming the Government of this Protestant Church and Nation. He comforts me again with laying it down, *That there may be rightful Successors, tho' they be not the next Heirs by Blood to the Crown, p. 21*; which I think indeed agrees with the Constitution of our hereditary Monarchy. Again, he affirms very honestly, that *There was anciently a Power in the Crown to interrupt the Lineal Succession by the Exclusion of the Right Heir.* I believe there was; but I believe likewise that there was never any Power in the Crown so great, but that it is now as great in the *Legislature*. But it seems this Gentleman, with his Eye directly on the Pretender, thinks the last Will and Testament of an *English* Monarch may dispose of the Crown better than an Act of Parliament. For, says he, *it was the usual Custom, i. e. the Common Law, in the Times nearer the Conquest, for our Kings to*
dispose

dispose of their Crowns as they thought fit, without Regard to Proximity of Blood; and their Method of doing this was by their last Wills and Testaments. p. 22. Let me grant this; for then I hope *le Roy le Veult* in Parliament is a better Will and more effectual than any other Writing whatsoever. But be it by Will and Testament, or by Statute, I am sure there is an End of that Unalienable and *Indefeasible Hereditary Right*, which has been the Word given to deprive us of all our *English Birthrights*.

If your Lordship shew this Letter, I am not ashamed you should read out my Name to it: Not but that I am sensible of what they call Prudence, not to meddle with a powerful Party, no doubt, enough inclinable to Revenge. But this, my Lord, is a Cause of that Importance, as calls for every Man's Testimony for it or against it. I shall be bold to give my Testimony against it in the Time of greatest Danger. Not that at present I think there is any great Danger, if we are in our Senses, because the Strength of the Cause is put into this glorious Book; and after all is but sorry Weakness, as I think this little Specimen may convince your Lordship, and any Friends to whom you may please to impart it.

I know indeed that some honest People, upon reading this stately Volume of hereditary Right, began to shake their Heads, and to think it a Manifesto of the Pretender's coming in. But for my Part, I think it only a forward foolish Step, and even taken at a wrong Time. I have met with an Account of all the Plots and Conspiracies since the Reformation; and I have always observed, that the happy Discovery and Prevention of them has been owing, for the most Part, to a Presumption and Confidence of Success among the Parties concerned in them. They have been too full of their Design, not able to contain it, and so their Opening too soon has spoiled the whole Plot. I apply this in my own Mind to the Jacobites and
Papists

Papists who are for the Pretender. What they may do by Silence and secret Reserves, I know not ; but their open Confessions and Demands in Print, are yet too early for any thing but to betray themselves, and to put the Government and Nation upon their Guard against them. In my Opinion, it had been wiser in them to have kept their *Assertions* and *Queries*, as their Mother-Church has done the Scriptures, suppressed and concealed from the People ; for if they are read and understood, they do but arise up in Judgment against the Publishers thereof. I would only desire any sensible Man to read over this *Assertion of the hereditary Right of the Crown of England*, and see what Mazes and Confusions the Author runs into, till in Effect he comes back into our present Settlement, *an hereditary Right tho' not in Proximity of Blood ; any next Heir to be kept out of the Throne, upon manifest Inabilities for Government, &c.* which (granting all their other Pretensions of Title to be true) is enough to prove Her Majesty's undoubted Right, and a legal Succession in the illustrious House of *Hannover*. I pray, my Lord, let us not be run down by a noisy Faction, in their open Defiance to the QUEEN's hereditary Right, and to that of Her Protestant Successors as limited by Law. It is a special Providence, that by taking the most solemn Oaths, our Consciences depend upon it ; nay, our establish'd Church, the Protestant Interest in *Europe*, our Civil Rights and Liberties, the Well-being of our Posterity, every thing that can be dear to a good Christian and an honest *Briton*. Our own Reason, our own Conscience, can never fail us : If we seek our own Ruine, it must be a judicial Infatuation upon us ; which I hope God will not send down, if we turn unto him in Prayer to bless the Queen and spare this People.

I am,

Octob. 28,
1713.

My LORD, Your Lordship's
Faithful humble Servant,

W. K.

